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No.

In The

Supreme Court of the United States

October Term, 1992

CHARLES BAGLEY,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May a search conducted in reliance upon an invalid search warrant later be justified on the basis of consent in conformity with the Fourth Amendment?

2. May a reviewing court substitute its judgment for that of a trial court on the factual issue of the existence of consent, in conformity with the Fourth Amendment?

3. Does an individual's consent to only a search also constitute consent to a subsequent seizure in conformity with the Fourth Amendment?

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Petitioner seeks a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania.

OPINIONS BELOW

The first instance, the Court of Common Pleas of Delaware County, Court of Pennsylvania, filed a written opinion which has not been reported (App. C, 42a).

Following an interlocutory appeal by the Commonwealth of Pennsylvania, a panel of the Superior Court of Pennsylvania, filed an opinion which is reported. *Commonwealth v. Bagley,* 408 Pa. Super. 188, 596 A.2d 811 (1991) (App.B, 3a).

The Supreme Court of Pennsylvania thereafter denied Petitioner's petition for allowance of appeal to that Court, which denial is reported. *Commonwealth v. Bagley,* ___ Pa. ___, 611 A.2d 710 (1992) (App. A, 1a).

STATEMENT OF JURISDICTION

The order of the Supreme Court of Pennsylvania denying Petitioner's petition for allowance of apeal was a final judgment rendered by the highest court of the state in which a decision could be had. The questions presented concern rights claimed by petitioner under the Constitution of the United States. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

I. The Fourth Amendment to the Constitution of the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

This state court prosecution began on October 31, 1989 by the filing of a criminal complaint by the District Attorney of Delaware County, Pennsylvania, charging petitioner Charles Bagley ("Bagley") with murder and manslaughter in connection with the death of his wife six months previously.

On January 3, 1990 Bagley filed a motion to suppress certain evidence seized pursuant to eight of the twelve search warrants executed by police during 1989. Bagley argued, *inter alia,* that a warrant executed on March 26, 1989, pursuant to which his home was searched and items were seized therefrom, was issued absent probable cause and was insufficiently specific under the Fourth Amendment. The Commonwealth responded that the warrant was valid and that, even if not, Bagley had consented to the search and seizure which had occurred at his home on that day. An evidentiary hearing occurred before the Court of Common Pleas of Delaware County, Pennsylvania on January 11, 1990, and by order and opinion filed on April 4, 1990, that trial court granted in part Bagley's motion to suppress, finding that (1) the warrant in question was facially invalid, and (2) that Bagley "did not freely and voluntarily consent to a search of his home on March 26, 1989." (App. C, 61a).

The Commonwealth filed an interlocutory appeal of the trial court's suppression order,[1] and on July 30, 1991 a panel of the Superior Court of Pennsylvania substantially reversed that order. Although the panel concurred that the warrant in question was facially invalid, it held, contrary to the trial court's finding of fact, that Bagley had validly consented to the search of and seizure from his home.

---

1. *See Commonwealth v. Dugger,* 506 Pa. 537, 486 A.2d 382 (1985).

Bagley sought reargument *en banc* in the Superior Court, which was denied by order entered September 27, 1991. On October 25, 1991 Bagley filed with the Supreme Court of Pennsylvania a petition for allowance of appeal, which was denied by order entered July 22, 1992.

The evidence adduced at the suppression hearing was that at approximately noon on March 26, 1989, Detective Michael Honicker of the Criminal Investigation Division of the Delaware County District Attorney's office arrived at the Bagley home, together with a uniformed officer, in order to take a statement from Bagley regarding the death of his wife earlier that day and to await the arrival of a search warrant (App.C, 43a).

Honicker introduced himself to Bagley as a detective with the Homicide Division and stated that he was investigating the death of Bagley's wife (App. C, 43a). Upon learning that other persons in the house were cleaning the upstairs portion of the house, Honicker asked Bagley to have them stop because police "were in the process of obtaining a search warrant to process the residence for a crime scene," (App. C, 43a). In response to Honicker's statement that a search warrant was on its way so that the crime scene could be processed, Bagley stated that a search warrant would not be needed. Honicker disagreed: "I told him that was our policy." (App.C, 44a).

Honicker then listened to Bagley explain the circumstances of his wife's death, and accompanied him on a walking tour of the house (App. C, 44a). Honicker conducted no searches or seizures himself. When search warrant No. 12504 arived, at 1:15 or 1:30 P.M., Bagley was repeating his statement to Honicker, who was making notes (App. C, 45a). The warrant was read to Bagley prior to the search and was then executed by the officers with whom it arrived, while Bagley continued his statement to Honicker. The items seized pursuant to that warrant were listed on the appropriate receipt/inventory form and the warrant documents were then, in

accord with Rule 2010 of the Pennsylvania Rules of Criminal Procedure, returned to the clerk of the trial court.

REASONS FOR GRANTING THE WRIT

The final disposition of Bagley's Fourth Amendment claims by the Supreme Court of Pennsylvania was based upon an opinion which directly conflicts with the Fourth Amendment jurisprudence of this Court and of the United States Courts of Appeals. Specifically, the opinion on the issue of Bagley's "consent" to the search and seizure of his home is absolutely *sui generis*, and flies in the face of well-established authority concerning both the consent exception to the warrant requirement and the role of an appellate court reviewing a suppression court's findings of fact.

I.

A SEARCH CONDUCTED IN RELIANCE UPON AN INVALID WARRANT MAY NOT IN CONFORMITY WITH THE FOURTH AMENDMENT, LATER BE JUSTIFIED ON THE BASIS OF CONSENT.

The trial court found as an uncontradicted fact, that the seizure of evidence from the Bagley home on the day of the first search, March 26, 1989, occurred solely as a result of the execution of search warrant no. 12504. Detective Honicker, to whom Bagley supposedly expressed his consent, rejected Bagley's statement that no search warrant would be needed by advising him that execution of a search warrant was police policy (App. C, 44a). Honicker conducted no searches for nor seizures of evidence himself. The warrant was read to Bagley prior to its execution and was then executed by those officers who brought it (App. C, 45a). The items seized were seized only by those officers. The trial court accordingly found as a fact that the search which led to the seizure occurred only after the warrant had arrived and was read to Bagley.

The issue of consent in fact surfaced *for the first time* only after it became apparent to the Commonwealth that the validity of that first warrant was very doubtful.

In the seminal case of *Bumper v. North Carolina*, 391 U.S. 543, 88 S. Ct. 1788 (1968), this Court addressed foursquare the Commonwealth's tactic of seeking to justify as consensual, after the fact, a search which actually occurred pursuant to a defective warrant: "A search conducted in reliance upon a warrant *cannot later be justified on the basis of consent* if it turns out that the warrant was invalid." *Id.*, 88 S. Ct. at 1292 (footnote omitted) (emphasis added). That clear expression of the black letter law was completely and inexplicably ignored by the reviewing courts below.

II.

THE REVIEWING COURT MAY NOT IN CONFORMITY WITH THE FOURTH AMENDMENT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT ON THE FACTUAL ISSUE OF THE EXISTENCE OF CONSENT.

The issue as to whether an individual has validly consented to a search is one of fact. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041 (1973). Although characterized as a "conclusion of law" by the trial court, that court expressly found that Bagley "did not freely and voluntarily consent to a search of his home on March 26, 1989," (App. C, 61a). The basis for that finding, as is apparent from a fair reading of the trial court opinion, was threefold: (1) that Bagley himself believed that he was merely acquiescing to police authority, since he "was aware that a search of the residence was inevitable," (App. C, 51a); (2) that the seizure which occurred that day was solely as a result of the execution of the warrant, *supra*; and (3) that Honicker, to whom Bagley supposedly tendered his

consent to search, in fact rejected that consent, *supra.*

In the face of the trial court's factual finding as to lack of consent, the reviewing court's task was solely to determine whether those findings were clearly erroneous. *e.g.*, *United States v. Cooper*, 949 F.2d 737, 744 (5th Cir. 1991). The trial court's findings were in fact uncontradicted. The reviewing courts simply ignored their proper function in ignoring the trial judge's findings of fact on this crucial issue.

III.

AN INDIVIDUAL'S CONSENT TO ONLY A SEARCH DOES NOT ALSO CONSTITUTE CONSENT TO A SUBSEQUENT SEIZURE IN CONFORMITY WITH THE FOURTH AMENDMENT.

The reviewing court's substitution of their own judgment, for that of the trial court on the consent issue was based upon the conclusion that Bagley's "consent" that Honicker view certain areas of Bagley's home constituted in addition Bagley's consent that certain items be seized and carried away by other police officers. Specifically, the Superior Court panel opined that the subsequent seizure was permissible because Bagley had "abandoned any reasonable expectation of privacy which he enjoyed with respect to such property." (App. B,19a). In fact, the panel misapprehended the law respecting the permissible scope of a consent search and misapprehended as well the Fourth Amendment distinction between a search and a seizure.

Assuming *arguendo* that Bagley had validly consented to Honicker's inspection tour, that did not constitute consent to the subsequent *seizure* of his property, whether seen by Honicker or not. In fact, there is nothing whatsoever in the record which would support the reviewing court's "finding of fact" that Bagley

consented to any seizure at all. There is no question that when the asserted justification for a search and seizure is an individual's consent, the scope of a consent search is "determined on the terms of the actual consent . . . The government may not exceed the boundaries of the consent, and any evidence gathered beyond those boundaries must be excluded." *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir 1992) (citations omitted); *United States v. Gay*, 774 F.2d 368, 377 (10th Cir. 1985); *United States v. Leary*, 846 F.2d 592 (10th Cir. 1988) (consent to inspect did not extend to consent to seize); *United States v. Milian-Rodriguez*, 759 F.2d 1558 (11th Cir.) (consent to narrow search is not license to conduct general search), *cert. denied*, 474 U.S. 845 (1985). As Professor LaFave has put it: "And if the consent was for the police officer *merely to look* at a specified object, that consent *does not itself authorize a full seizure and carrying away of that object* . . ." 3 W. LaFave, *Search and Seizure*, 8.1(c) (2nd ed. 1987) (collecting cases). *There is absolutely no support for the panel's finding that Bagley consented to any seizure of his property.*

Moreover, the panel's observation that Bagley surrendered his expectation of privacy by taking Honicker on the house tour confused the scope of consent with the predicate for the plain view exception to the warrant requirement. A car left parked on the street is not subject to a reasonable expectation of privacy since all may see it, but that obviously does not permit a police officer without more to seize it without a warrant and without consent. The interests invaded by a search and by a seizure are in fact quite distinct:

> The right to security in person and property protected by the Fourth Amendment *may be invaded in quite different ways by searches and seizures.* A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person

> or property . . . If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy [citations omitted]. *A seizure of the article, however, would obviously invade the owner's possessory interest* [citations omitted].

Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 2306 (1990) (emphasis added).

Under no possible view of the facts did Bagley consent to a police invasion of his possessory interest in the property which they seized from his home. Nor were such items subject to seizure under the plain view exception: Since the police did not know whether or not a crime had even occurred, they neither could nor did ever assert that the incriminating character of the items seized was "immediately apparent," as is necessary to justify a plain view seizure. *Horton, supra*, at 2308.

CONCLUSION

The petition for writ of certiori should be granted.

Respectfully submitted,

NEIL E. JOKELSON
Attorney for Petitioner

APPENDIX A — ORDER OF THE SUPREME COURT OF PENNSYLVANIA DATED JULY 27, 1992

SUPREME COURT OF PENNSYLVANIA
Eastern District

Charles W. Johns, Esq.
Prothonotary

468 City Hall
Philadelphia, PA 19107
(215) 560-6370

July 27, 1992

JEREMY T. ROSS, ESQUIRE
230 S. BROAD STREET 18TH FLOOR
PHILADELPHIA, PA 19102

Re: COMMONWEALTH OF PENNSYLVANIA
v. CHARLES BAGLEY
No. 973 E.D. Allocatur Docket 1991

Dear Petitioner:

This is to advise you that the following order has been endorsed on the Petition for Allowance of Appeal filed in the above captioned matter:

"07/22/92
Petition Denied.
Per Curiam"

Sincerely yours,

Office of the Prothonotary
Supreme Court of Pennsylvania

Appendix A

c: LEVY, J.; DELAWARE
CRIMINAL; 8188-89
DENNIS C. MCANDREWS, ESQUIRE

APPENDIX B — OPINIONS AND JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA FILED JULY 30, 1991

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1328 Philadelphia, 1990

COMMONWEALTH OF PENNSYLVANIA

vs.

CHARLES BAGLEY,

Appellee

Appeal from Order of the Court of Common Pleas, Criminal Division, of Delaware County, No. 8188 of 1989.

BEFORE: WIEAND, KELLY and CERCONE, JJ.

OPINION BY WIEAND, J.:

During an investigation into the suspicious death of the wife of Charles Bagley, police obtained and executed twelve search warrants. After Bagley had been arrested and charged with criminal homicide, he moved to suppress evidence seized pursuant to the execution of eight such warrants. After hearings thereon, the trial court suppressed evidence seized pursuant to four warrants. The Commonwealth appealed. It has certified that the suppression court's order, if allowed to stand, will effectively terminate the prosecution. See: *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985).

At or about 1:00 a.m. on March 26, 1989, Easter Sunday, Charles Bagley arrived at the emergency room of Paoli Memorial

Hospital, carrying the body of his wife, Yvonne. Bagley said that his wife had been electrocuted accidentally when an electrical appliance had fallen into the hot tub in which she had been bathing. He was overheard by emergency room personnel to say that he had torn apart the bathroom in which the accident had occurred and was considering the burning of his home. Bagley also said that he did not want police to be notified about his wife's death. Later the same day, the administrative nurse at the hospital notified Radnor Township Police of the incident and expressed the opinion that the circumstances were suspicious. She told police that she had observed a laceration above Mrs. Bagley's right eye and bruises on her body. She also narrated the statements which had been made by the defendant-appellee upon his earlier arrival at the hospital. Based on this information, Radnor Township Police and the District Attorney of Delaware County began an investigation which culminated in Bagley's arrest for the killing of his wife.

In reviewing an appeal by the Commonwealth from an order suppressing evidence,

> we must consider only the evidence of the defendant's witnesses and so much of the evidence for the prosecution as read in the context of the record as a whole remains uncontradicted. *Commonwealth v. Hamlin*, 503 Pa. 210, 469 A.2d 137 (1983) (plurality opinion). While we are bound by the [suppression] court's findings of fact if supported by the record, we are not bound by the court's legal conclusions which are drawn from the facts of the case. *Commonwealth v. Cortez*, 507 Pa. 529, 491 A.2d 111 (1985).

Commonwealth v. Lagana, 517 Pa. 371, 375-376, 537 A.2d 1351,

1353-1354 (1988). See also: *Commonwealth v. James*, 506 Pa. 526, 532-533, 486 A.2d 376, 379 (1985); *Commonwealth v. Person*, 385 Pa.Super. 197, 200, 560 A.2d 761, 762-763 (1989). "We will . . . affirm the decision of the suppression court 'if it can be sustained for any reason whatsoever, even if the [suppression] court offered an erroneous reason to support its action.' " *Commonwealth v. Bowers*, __Pa.Super.__, __, 583 A.2d 1165, 1167 (1990), quoting *Commonwealth v. Reidenbaugh*, 282 Pa.Super. 300, 309-310, 422 A.2d 1126, 1131 (1980). See also: *Commonwealth v. Shaw*, 494 Pa. 364, 368 & n.1, 431 A.2d 897, 899 & n.1 (1981); *Commonwealth v. Nelson*, 320 Pa.Super. 488, 493-494, 467 A.2d 638, 641 (1983).

Search Warrant No. 12504

Search warrant no. 12504 was issued on March 26, 1989, Sunday, and was executed the same day, at or about 1:30 p.m., by Detective Joseph Maguire of the Radnor Township Police Department. The warrant identified the criminal violation being investigated as "Suspicious Death" and authorized police to search the Bagley home for and seize "[a]ny items which may be related to the death of Yvonne Bagley." The affidavit of probable cause which supported the issuance of the search warrant stated:

> On 26 March 89 at 0954 hours, Officer Antoini of the Radnor Township police Department received a phone call at the police station from a Janet Dragish, the administrative nurse at Paoli Memorial Hospital. Janet Dragish told Officer Antoini that at approximately 0100 hours on 26 March 89, a Charles Bagley brought his wife into Paoli Memorial Hospital wrapped in a wet blanket and stated that she was in a hot tub in their home and an electric

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> light fell into the hot tub and electrocuted her. Janet Dragish stated that she felt that the death was suspicious and felt that the police should be called.
>
> On 26 March 89, at 1110 hours, Sgt Leighton spoke to Janet Dragish by phone in which she states that she had viewed the body of Yvonne Bagley and saw a laceration above the right eye, and that there were other bruises on her body. Janet Dragish was told by Charles Bagley that he had torn the room apart where this incident took place and that he was thinking about setting fire to the house.
>
> Based on the above mentioned facts, this affiant asks that a search warrant be issued to process the home for any evidence such as fibers, hair, prints and any other items which may have to do with the suspicious death of Yvonne Bagley.

The suppression court held that the search warrant was defective on its face because, in violation of Pa.R.Crim.P. 2006(e), it failed to identify any crime which had been committed and also because it did not particularly describe the property for which the warrant had been issued. The Commonwealth argues on appeal that, given the limited information possessed by the police concerning Yvonne Bagley's death, search warrant no. 12504 stated the items being sought as specifically as possible under the circumstances, thereby passing constitutional muster. The Commonwealth also argues that, to the extent the warrant may have technically violated Pa.R.Crim.P. 2005(b) and 2006(e), the violations were not of constitutional dimension and did not require suppression of the evidence seized.

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"It is a fundamental rule of law that a warrant must name or describe with particularity the property to be seized and the person or place to be searched. . . . In addition, the search may not go beyond the scope of the warrant." *Commonwealth v. Eichelberger*, 352 Pa.Super. 507, 513, 508 A.2D 589, 592 (1986), citing Pennsylvania Constitution, Article I, Section 8; Pa.R.Crim.P. 2005(b) and (c); and *Commonwealth v. Searles*, 450 Pa. 384, 302 A.2d 335 (1973). See also: *Commonwealth v. Reese*, 520 Pa. 29, 32, 549 A.2d 909, 910 (1988), *cert. denied*, ___ U.S. ___, 110 S.Ct. 3237, 111 L.Ed.2d 748 (1990); *Commonwealth v. Bleigh*, ____ Pa.Super. ____, ____, 586 A.2d 450, 453 (1991).

> The particularity requirement prohibits a warrant that is not particular enough and a warrant that is overbroad. These are two separate, though related, issues. A warrant unconstitutional for its lack of particularity authorizes a search in terms so ambiguous as to allow the executing officers to pick and choose among an individual's possessions to find which items to seize. This will result in the general "rummaging" banned by the fourth amendment. *See Marron v. United States*, 275 U.S. 192, 195, 48 S.Ct. 74, 75, 72 L.Ed. 231 (1927). A warrant unconstitutional for its overbreadth authorizes in clear or specific terms the seizure of an entire set of items, or documents, many of which will prove unrelated to the crime under investigation. The officers executing such a warrant will not rummage, but will "cart away all documents." *Application of Lafayette Academy*, 610 F.2d 1, 3 (lst Cir. 1979). An overbroad warrant is

> unconstitutional because it authorizes a general search and seizure.

Commonwealth v. Santner, 308 Pa.Super. 67, 69-70 n.2, 454 A.2d 24, 25 n.2 (1982), *cert. denied*, 468 U.S. 1217, 104 S.Ct. 3585, 82 L.Ed.2d 883 (1984). In interpreting the particularity requirement set forth in Article I, Section 8 of the Pennsylvania Constitution, the Supreme Court has said:

> The language of the Pennsylvania Constitution requires that a warrant describe the items to be seized "as nearly as may be. . . ." The clear meaning of the language is that a warrant must describe the items as specifically as is reasonably possible. This requirement is more stringent than that of the Fourth Amendment, which merely requires particularity in the description. The Pennsylvania Constitution further requires the description to be as particular as is reasonably possible. *See Commonwealth v. Reese*, 520 Pa. 29, 31-32, 549 A.2d 909, 910 (1988) (Nix, C.J., dissenting) (Pennsylvania particularity requirement more stringent than that of the Fourth Amendment because Pennsylvania particularity requirement precedes probable cause requirement).
>
> It is settled Fourth Amendment jurisprudence that a warrant must specifically list the things to be seized. *Lo-Ji Sales Inc. v. New York*, 442 U.S. 319, 99 S.Ct. 2319, 60 L.Ed.2d 920 (1979); *Stanford v. Texas*, 379 U.S. 476, 85 S.Ct. 506, 13 L.Ed.2d 431 (1965). "The

requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231 (1927). The more rigorous Pennsylvania constitutional provision requires no less.

Although some courts have treated overbreadth and ambiguity as distinct defects in warrants, e.g. *Commonwealth v. Santner*, 308 Pa.Super. 67, 68 n. 2, 454 A.2d 24, 25 n.2 (1982), both doctrines diagnose symptoms of the same disease: a warrant whose description does not describe as nearly as may be those items for which there is probable cause. Consequently, in any assessment of the validity of the description contained in a warrant, a court must initially determine for what items probable cause existed. The sufficiency of the description must then be measured against those items for which there was probable cause. Any unreasonable discrepancy between the items for which there was probable cause and the description in the warrant requires suppression. An unreasonable discrepancy reveals that the description was not as specific as was reasonably possible.

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Commonwealth v. Grossman, 521 Pa. 290, 296-297, 555 A.2d 896, 899-900 (1989)(footnote omitted).

We have reviewed search warrant no. 12504 in the instant case and the circumstances surrounding its issuance, and we agree that the warrant was defective. A close reading of the affidavit of probable cause, construing it in a realistic and common sense manner, leads to the inescapable conclusion that the warrant was issued not upon a showing of reasonable probability that a crime had been committed, but, rather, upon nonspecific suspicions surrounding the death of Yvonne Bagley. As a result, the warrant stated no crime but suggested only that it had been issued in the investigation of a suspicious death. It authorized police to seize *anything* that *may* have been related to Mrs. Bagley's death. This was done without stating any cause for believing that Yvonne Bagley's death had been a criminal homicide. It is readily apparent, therefore, that the primary purpose for the search warrant was not to search for specific evidence of a crime which had been committed, but merely to allow police to conduct a general investigation to determine whether Yvonne Bagley's death might have been criminal.

The use of a search warrant as a general investigatory tool is prohibited by both the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. "A search warrant serves to authorize the seizure of identifiable and existing property. It is not available as a general investigatory tool to be used in place of a grand jury." *In re Casale*, 512 Pa. 548, 555, 517 A.2d 1260, 1263 (1986). "[M]ere suspicions do not constitute probable cause to support a search warrant." *Commonwealth v. Smith*, 511 Pa. 36, 47, 511 A.2d 796, 801 (1986), *cert. denied*, 479 U.S. 1006, 107 S.Ct. 643, 93 L.Ed.2d 700 (1986). See also: *Commonwealth v. Corleto*, 328 Pa.Super. 522, 528-529,

477 A.2d 863, 866 (1984); *Commonwealth v. Kanouff*, 315 Pa.Super. 392, 394-395, 462 A.2d 251, 252 (1983). A search warrant "may not be issued unless the affidavit alleges a preexisting crime." Comment (b) to Pa.R.Crim.P. 2002. See: *United States ex rel. Campbell v. Rundle*, 327 F.2d 153, 162-163 (3d Cir. 1964); *Commonwealth ex rel. Ensor v. Cummings*, 416 Pa. 510, 512-513, 207 A.2d 230, 231 (1965). See also: Pa.R.Crim.P. 2006(e). We conclude, therefore, that the suppression court correctly invalidated search warrant no. 12504 as a general investigative tool.

We reject the Commonwealth's contention that the police were entitled in good faith to rely upon the magistrate's determination that a warrant could properly be issued. In *Commonwealth v. Edmunds*, ____ Pa. ____, 586 A.2d 887 (1991), the Pennsylvania Supreme Court held that there is no good faith exception to the exclusionary rule applicable to violations of Article I, Section 8 of the Pennsylvania Constitution.

The Commonwealth's contention that the initial search of the Bagley home was made with Bagley's voluntary consent presents a more difficult issue. This argument is based on events which occurred prior to arrival of the search warrant. These circumstances appear from the suppression court's findings of fact as follows:

> 2. At approximately noon on March 26, 1989, Detective Michael Honicker of the Delaware County Criminal Investigation Division went to the defendant's residence at 240 Radnor-Chester Road, Radnor, Pennsylvania. Detective Honicker was accompanied by a uniformed officer of the Radnor Township Police Department.

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3. Detective Honicker went to the defendant's residence for the purpose of taking a statement from the defendant concerning the death of his wife, and to await the arrival of a search warrant, the application for which was being prepared, in order to "process the residence as a crime scene."

4. Upon arriving at the defendant's residence, Detective Honicker knocked on the door which was answered by a person other than the defendant. Detective Honicker identified himself and asked to speak to Mr. Bagley.

5. The defendant walked out and met Detective Honicker and the uniformed officer who was with him, and he led them back to the living room area of the house. Upon meeting the defendant, Detective Honicker again identified himself and told the defendant that his purpose in being there was to investigate the death of defendant's wife.

6. While speaking to defendant, Detective Honicker noted the presence of other people in the house and asked defendant why those persons were present. The defendant told the detective that they were in the process of cleaning the upstairs floor of the house.

7. Detective Honicker requested that defendant summon downstairs the people who were on the upstairs floor of the house and

instruct them to stop their cleaning work. Detective Honicker explained to defendant that he wanted the cleaning stopped ". . . because we were in the process of obtaining a search warrant to process the residence for a crime scene."

8. The defendant complied with Detective Honicker's direction and called the people downstairs. He further told Detective Honicker that a search warrant would not be needed, but Detective Honicker advised the defendant that it was "our policy."

9. When the people in defendant's house came downstairs, they were taken to another area of the house by the uniformed officer who accompanied Detective Honicker.

10. Detective Honicker was alone with the defendant in the living room area of the house. He advised the defendant of his Miranda warnings, and asked defendant if he wished to give a statement concerning his wife's death.

11. The defendant told Detective Honicker that he would give a statement, and he proceeded to explain his version of the events surrounding the death of his wife.

12. During the course of making his statement, the defendant told Detective Honicker that it would be easier to explain the events if he showed the detective what

happened; with Detective Honicker's agreement, the defendant proceeded to take Detective Honicker to the various areas of the house where the events had occurred.

13. The defendant took Detective Honicker into the bedroom and bathroom areas. While in the bathroom area, Detective Honicker noticed that various fixtures and faucets were missing, and he was shown by the defendant the electrical outlet into which the defendant claimed the soldering gun which had caused his wife to be electrocuted was plugged.

14. After showing Detective Honicker various areas of the house, the defendant then took him outside. The defendant told him that he had attempted to destroy the soldering gun and electrical wire by burning them in the fireplace, and had then removed them from the fireplace and put them outside in the trash with other items removed from the bathroom.

15. The defendant then showed Detective Honicker the items removed from the bathroom and the charred remains of the soldering gun and electrical wire which were in bags standing next to trash cans outside the house.

16. Detective Honicker and the defendant returned to the house and sat down so that the detective could prepare a written statement of the defendant's version of the events surrounding his wife's death.

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> 17. While Detective Honicker was preparing the written statement, other detectives and police officers arrived at the Bagley residence with search warrant No. 12504 at approximately 1:15 to 1:30 P.M.
>
> 18. The warrant was read to the defendant, and a search of the premises was then conducted.

It is well settled that if a person voluntarily consents to a search, evidence found as a result of that search is admissible against him. See: *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). See also: *Commonwealth v. Latshaw*, 481 Pa. 298, 303, 392 A.2d 1301, 1304 (1978), *cert. denied*, 441 U.S. 931, 99 S.Ct. 2050, 60 L.Ed.2d 659 (1979); *Commonwealth v. Boyer*, 455 Pa. 283, 286, 314 A.2d 317, 318 (1974); *Commonwealth v. Walsh*, 314 Pa.Super. 65, 73, 460 A.2d 767, 771 (1983). The consent, however, must be "given freely, specifically, unequivocally, and voluntarily." *Commonwealth v. Mamon*, 449 Pa. 249, 255, 297 A.2d 471, 475 (1972). See also: *Commonwealth v. Harris*, 429 Pa. 215, 221, 239 A.2d 290, 293 (1968); *Commonwealth v. Lowery*, 305 Pa.Super. 66, 74, 451 A.2d 245, 248-249 (1982). "[T]he question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth v. Bustamonte, supra*, 412 U.S. at 227, 93 S.Ct. at 2047-2048, 36 L.Ed.2d at 862-863. See also: *Commonwealth v. Hubbard*, 472 Pa. 259, 274-275, 372 A.2d 687, 693-694 (1977); *Commonwealth v. Smagala*, 383 Pa.Super. 466 474 557 A.2d 347, 350 (1989); *Commonwealth v. Elliott*, 376 Pa.Super. 536, 553, 546 A.2d 654, 662 (1988). The burden of proving a valid consent to search rests upon the Commonwealth. *Commonwealth v. Griffin*, 232 Pa.Super. 163, 167-168, 336 A.2d 419, 421 (1975). See also: *United States v. Sebetich*, 776 F.2d 412, 424 (3d Cir. 1985), *cert.*

denied, 484 U.S. 1017, 108 S.Ct. 725, 98 L.Ed.2d 673 (1988); *Commonwealth v. Woods*, 240 Pa.Super. 72, 75, 368 A.2d 304, 306 (1976); *Commonwealth v. Tribblett*, 242 Pa.Super. 164, 167, 363 A.2d 1212, 1213 (1976).

The suppression court found that Bagley's consent had not been voluntary. It based its finding upon the decision of the United States Supreme Court in *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968). The issue before the Supreme Court in *Bumper* was "whether a search can be justified as lawful on the basis of consent when that 'consent' has been given only after the official conducting the search has asserted that he possesses a warrant." *Id.*, 391 U.S. at 548, 88 S.Ct. at 1791, 20 L.Ed.2d at 802. The Supreme Court held that there could be no valid consent under such circumstances, reasoning as follows:

> When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority. A search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out that the warrant was invalid. The result can be no different when it turns out that the State does not even attempt to rely upon the validity of the warrant, or fails to show that there was, in fact, any warrant at all.
>
> When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no

> right to resist the search. The situation is instinct with coercion — albeit colorably lawful coercion. Where there is coercion there cannot be consent.

Id., 391 U.S. at 548-550, 88 S.Ct. at 1792, 20 L.Ed.2d at 802-803 (footnotes omitted). See also: *Commonwealth v. White*, 459 Pa. 84, 327 A.2d 40 (1974), *cert. denied*, 421 U.S. 971, 95 S.Ct. 1967, 44 L.Ed.2d 461 (1975); *Commonwealth v. Banahansky*, 250 Pa.Super. 495, 378 A.2d 1257 (1977); *Commonwealth v. Pichel*, 229 Pa.Super. 103, 323 A.2d 113 (1974). But see: *Earls v. State*, 496 S.W.2d 464 (Tenn. 1973) (*Bumper v. North Carolina* does not establish blanket prohibition against finding voluntary consent after existence of a search warrant is made known; rather, State must show by clear and convincing evidence that consent was not based upon warrant or coerced by other factors).

Numerous cases decided since *Bumper* have found consents to search voluntary despite the fact that police threatened to seek or to obtain search warrants if consent were not given. See: *United States v. Garcia*, 890 F.2d 355, 360-362 (11th Cir. 1989)(consent to search voluntarily given even though preceded by police threat to seek warrant); *United States v. Twomey*, 884 F.2d 46, 50-52 (1st Cir. 1989), *cert. denied*, ___U.S. ___, 110 S.Ct. 2592, 110 L.Ed.2d 273 (1990) (consent valid where police said they intended to get warrant if consent to search not given); *Commonwealth v. Woods, supra* (statement by police officer that he would procure search warrant if defendant did not consent to search was not so implicity coercive as to render consent involuntary). See generally: 3 W. LaFave, Search and Seizure, § 8.2(c)(2d Ed. 1987) (collecting cases). See also: *United States v. Castillo*, 866 F.2d 1071, 1081-1082 (9th Cir 1989); *United States v. Long*, 866 F.2d 402, 404-405 (11th Cir. 1989); *United States v. Stallings*, 810 F.2d 973, 976 (10th Cir. 1987); *United States v. Raines*, 536 F.2d 796, 801 (8th Cir. 1976), *cert.*

denied, 429 U.S. 925, 97 S.Ct. 327, 50 L.Ed.2d 293 (1976); *United States v. Faruolo*, 506 F.2d 490, 493-495 (2d Cir. 1974); *United States v. Boukater*, 409 F.2d 537, 538 & n.2 (5th Cir. 1969); *State v. Owens*, 418 N.W.2d 340, 343-344 (Iowa 1988); *People v. McClure*, 39 Cal.App.3d 64, 69-70, 113 Cal.Rptr. 815, 818-819 (1974). Thus, it has been said that " 'where law enforcement officers indicate only that they will attempt to obtain or are getting a warrant such a statement cannot serve to vitiate an otherwise consensual search.' " *United States v. Dennis*, 625 F.2d 782, 793 (8th Cir. 1980), quoting *United States v. Culp*, 472 F.2d 459, 461 n.1 (8th Cir. 1973), *cert. denied*, 411 U.S. 970, 93 S.Ct. 2161, 36 L.Ed.2d 692 (1973). See: *United States v. Tutino*, 883 F.2d 1125, 1137 (2d Cir. 1989), *cert. denied*, ___ U.S. ___, 110 S.Ct. 1139, 107 L.Ed.2d 1044 (1990) (consent given after police said they were in process of getting search warrant was voluntary; such a statement by police was not coercive).

Instantly, Detective Honicker did not represent to appellee that he had a warrant authorizing him to conduct a search. He also did not threaten to obtain a warrant if appellee did not consent to a search. In fact, Detective Honicker had no intention of conducting a search. His purpose in going to appellee's home was to take a statement from appellee and to await the arrival of the search warrant, which was then being obtained by Detective Maguire. However, Honicker did say to appellee that a warrant was being obtained. Bagley responded by telling Detective Honicker that a search warrant would not be needed. In the face of this manifestation of consent, Honicker informed Bagley that it was police "policy" to wait for the search warrant. Appellee was then advised of his *Miranda* rights and began giving a statement concerning the death of his wife. During this statement, Bagley said that it would be easier to show the detective how the events surrounding his wife's death had occurred. Appellee then took

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Detective Honicker on a tour of various areas of the house and the surrounding grounds and specifically pointed out to him all the evidence which was later seized.[1]

Viewing the totality of these circumstances, we are satisfied that appellee voluntarily granted consent for Honicker to inspect his home. The circumstances of Bagley's conversation with Honicker prior to the arrival of the search warrant belie any suggestion of coercion, either of an express or implied nature. It was appellee who, without a request to do so, insisted upon showing Honicker around the house so that he could better explain his own exculpatory version of the events leading to his wife's death, specifically pointing out to the detective all of the items of evidence which were subsequently seized. Although the actual seizure of evidence from appellee's home was not made until after the invalid warrant had arrived, Bagley, by his prior actions in freely showing evidence to Detective Honicker, abandoned any reasonable expectation of privacy which he enjoyed with respect to such property. See: *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576, 582 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."). See also: *United States v. Paulino*, 850 F.2d 93, 97 (2d Cir. 1988), *cert. denied*, 490 U.S. 1052, 109 S.Ct. 1967, 104 L.Ed.2d 435 (1989) (in order to demonstrate reasonable expectation of privacy in area searched, person challenging search must first demonstrate subjective desire to keep his effects private); *United States v. Berrong*, 712 F.2d 1370, 1373 (11th Cir. 1983), *cert. denied*, 467 U.S. 1209, 104 S.Ct. 2397, 81 L.Ed.2d 354 (1984) (same). Cf. *United States v. Horowitz*, 806 F.2d 1222, 1226 (4th Cir. 1986)(defendant's willful disclosure of his employer's trade secrets to a competing bidder for a government contract vitiated any

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1. Appellee has not sought to suppress this statement.

reasonable expectation of privacy he may have had in them); *United States v. Buettner-Janusch*, 646 F.2d 759, 766-767 (2d Cir. 1981), *cert. denied*, 454 U.S. 830, 102 S.Ct. 126, 70 L.Ed.2d 107 (1981) (defendant college professor forfeited any reasonable expectation of privacy in enclosed areas of his laboratory by granting permission to use the areas to an undergraduate research assistant, a fellow professor and at least eight other persons). Because Honicker had been invited to inspect the Bagley home, he was voluntarily placed in a position where he could observe various items of evidence. Because these items were rendered obvious by his conduct, Bagley voluntarily surrendered any right of privacy with respect thereto. With respect to the items which appellee had already placed into the trash outside his home, moreover, he manifested a clear intent to abandon any reasonable expectation of privacy in such property even prior to the time when he voluntarily showed such items to Detective Honicker. See: *California v. Greenwood*, 486 U.S. 35, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988)(no reasonable expectation of privacy exists in trash left for collection in an area accessible to the public). See also: *Commonwealth v. Perdue*, 387 Pa.Super. 473, 480-482, 564 A.2d 489, 492-493 (1989); *Commonwealth v. Cihylik*, 337 Pa.Super. 221, 486 A.2d 987 (1985); *Commonwealth v. Minton*, 288 Pa.Super. 381, 390-392, 432 A.2d 212, 216-217 (1981). Therefore, police could subsequently seize the items of evidence even though the search warrant had been improperly issued. The invalidity of the warrant did not compel the suppression of this evidence. The suppression court erred when it held otherwise.

Search Warrants Nos. 13665, 12505 and 17105

Search warrant no. 13665 was executed at the Bagley residence on March 30, 1989. The warrant was issued for items described as follows: "Examination and Inspection of the Electrical system, Photographs, Shelf and cardboard box that was in the

Bathroom on the Shelf." The affidavit of probable cause, which was incorporated by reference into the warrant, recited that the Commonwealth was requesting the warrant to be issued to authorize police "TO SEARCH THE BATHROOM, MASTER BEDROOM AND ADJACENT AREAS FOR THE TYPE OF ELECTRICAL SERVICE LOCATED IN THESE AREAS INCLUDING, INTER ALIA: BEING WALL OUTLETS, WALL SWITCHES, WIRING, CIRCUIT BREAKERS AND VOLTAGE OR ELECTRICAL CURRENT." The inventory recites the items seized as follows: (1) one duplex receptacle; (2) tape wrapped around receptacle; (3) one 20 amp circuit breaker; (4) one roll of twenty-four photographs taken of the scene; and (5) one videotape of the scene. Subsequent testing of the receptacle and circuit breaker revealed that both had been in working order and that the circuit breaker had been turned off manually and not by a surge of electricity.

Search warrant no. 12505 was issued for "Wires in Bathroom adjacent to Master Bedroom for inspection & testing. Address book of decedent, or letters to or from the decedent, a diary of the decedent, or other materials providing names and addresses of relatives or persons close to the decedent. . . ." This warrant was executed on April 12, 1989, and the following items of evidence were seized: (1) two outlets from bathroom; (2) exposed wires from bathroom light fixtures; (3) one letter found in kitchen dated 4/4/89 signed Charles Bagley; (4) one envelope found in Kitchen-Selective Insurance, New Jersey; (5) one telephone bill dated 3/21/89 found in kitchen; (6) airplane baggage claim tickets for Pan Am #822635; (7) paper with passport information and business card for travel agency; (8) address book found in living room; (9) Century 21 name tag from John Matthews, Inc. Realtors; (10) note from front door of residence from Sonja White; (11) various phone numbers and addresses; (12) letter from Honeywell Protection Services to Charles Bagley; and (13) letter from Barclays Bank in England dated 3/13/89.

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Finally, search warrant no. 17105 was issued on the basis of an affidavit which requested a warrant "FOR THE PURPOSE OF TESTING THE ORIGINAL CIRCUIT, OUTLET, HOT TUB, WITH THE SAME CIRCUMSTANCES RELATING TO THE DEATH OF YVONNE BAGLEY." The warrant named the items to be seized as follows: "To recreate and Duplicate and Reconstruct the same circumstances of the Death of Yvonne Bagley as it related to the electrical supply in the residence on the evening of her Death. The use by her of the Jacuzzi (hot tub)." Pursuant to this warrant, an expert hired by the Commonwealth simulated the events of March 26, 1989, as described by appellee, in order to determine whether Yvonne Bagley's death could have been caused by electrocution. Following this simulation, the expert formed an opinion that "Yvonne Bagley did not and could not have sustained either a lethal shock or an incapacitating shock due to an accidental contact with an intact soldering gun as Charles Bagley has claimed." The expert's testing led him to the further conclusion that the type of soldering gun to which appellee had attributed his wife's death "is incapable of producing a lethal or incapacitating shock to a human subject who makes direct or indirect contact with the soldering gun while it is plugged into an operating electrical outlet and while the subject is bathing in a bathtub."

The suppression court, in suppressing evidence seized and information obtained pursuant to these warrants, concluded that the warrants had been issued for improper and unauthorized purposes. The court reasoned as follows:

> Neither the examination, inspection and testing of an electrical system nor the recreation and duplication of circumstances surrounding a victim's death qualifies under any of the purposes authorized by Rule 2002. A search warrant serves to authorize the seizure

of identifiable and existing property. It is not available as a general investigatory tool to be used in place of a grand jury. *In Re Casale*, __ Pa.__,517 A.2d 1260 (1986). Accordingly, we conclude that any evidence obtained pursuant to warrants 12505, 13665 and 17105 as the result of examination, inspection and testing of the electrical system at the Bagley residence or the recreation of the events surrounding the death of Yvonne Bagley must be suppressed.

Pursuant to warrant No. 13665, the police also took twenty-four photographs of the Bagley residence and a videotape of the scene. These items likewise are not authorized under the purposes set forth in Rule 2002 and also must be suppressed. Furthermore, the inventory receipt for warrant No. 13665 shows that a duplex receptacle, tape wrapped around the receptacle and a "20 amp circuit breaker" were seized from the Bagley residence. A reading of the warrant application shows, however, that the identification of items to be searched for and seized states the following, "Examination and inspection of the electrical system, photographs, shelf and cardboard box that was in the Bathroom on the shelf." The warrant application does not seek the seizure of any portions of the electrical system of the house. Accordingly, the seizure of the receptacle, tape and circuit breaker were not authorized by the warrant and these items also must be suppressed.

The Commonwealth argues on appeal that this reasoning was erroneous and that the warrants were properly issued under Pa.R.Crim.P. 2002(c) for property which constituted evidence of the commission of a criminal offense.[2]

Prior to the issuance of these search warrants the police had information which contradicted appellee's statement that his wife had died as a result of an accidental electrocution. The medical examiner, following an autopsy, concluded that the cause of Mrs. Bagley's death was homicide by drowning. This, together with additional information set forth in the affidavits of probable cause, provided probable cause for the issuance of search warrants nos. 13665, 12505 and 17105.

The purpose for the issuance of the warrants was to obtain evidence of the commission of a crime, pursuant to Pa.R.Crim.P. 2002(c), by confirming that Mrs. Bagley's death had not been caused by accidental electrocution. The electrical system at the Bagley residence constituted identifiable and existing property

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2. Pa.R.Crim.P. 2002 is as follows:

> Rule 2002. Purpose of Warrant
>
> A search warrant may be issued to search for and to seize:
>
> (a) contraband, the fruits of a crime, or things otherwise criminally possessed; or
>
> (b) property which is or has been used as the means of committing a criminal offense; or
>
> (c) property which constitutes evidence of the commission of a criminal offense.

which was properly the object of a search warrant. The electrical system was described adequately as being that servicing the area of the master bedroom and bathroom. This was sufficient to preclude an unnecessarily broad roaming of the house by police.

The federal courts have interpreted the Fourth Amendment and Fed.R.Crim.P. 41,[3] which is similar to Pa.R.Crim.P. 2002, to permit search warrants which authorize the seizure of intangible evidence. See: *Michigan Bell Telephone Co. v. United States,* 565 F.2d 385, 389 (6th Cir. 1977). See also: *United States v. New York Telephone Co.*, 434 U.S. 159, 168-170, 98 S.Ct. 364, 370-371, 54 L.Ed.2d 376, 387-388 (1977); *United States v. Mesa-Rincon*, 911 F.2d 1433, 1436 (10th Cir. 1990); *United States v. Torres,* 751 F.2d 875, 877-878 (7th Cir. 1984), *cert. denied*, 470 U.S. 1087, 105 S.Ct. 1853, 85

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3. Fed.R.Crim.P. 41 provides in relevant part:

> (b) Property or Persons Which May Be Seized with a Warrant.
>
> A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.
>
> * * *
>
> (h) Scope and Definition . . . .The term "property" is used in this rule to include documents, books, papers and any other tangible objects.

Fed.R.Crim.P. 41(b) and (h).

L.Ed.2d 150 (1985). In *United States v. Villegas*, 899 F.2d 1324 (2d Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 535, 112 L.Ed.2d 545 (1990), the Court of Appeals for the Second Circuit held that a search warrant had been issued properly for the purpose of surreptitiously entering a premises and photographing therein a suspected cocaine manufacturing operation. In rejecting the argument that search warrants may only authorize the seizure of tangible evidence, the Second Circuit reasoned:

> First, we note that Rule 41 does not define the extent of the court's power to issue a search warrant. Obviously the Fourth Amendment long antedated the Federal Rules of Criminal Procedure, which were first adopted in 1944. Given the Fourth Amendment's warrant requirements, and assuming no statutory prohibition, the courts must be deemed to have inherent power to issue a warrant when the requirements of that Amendment are met. *See, e.g., United States v. Torres*, 751 F.2d 875, 877-79 (7th Cir.1984), *cert. denied*, 470 U.S. 1087, 105 S.Ct. 1853, 85 L.Ed.2d 150 (1985); *Application of the United States of America In the Matter of an Order Authorizing the Use of a Pen Register*, 538 F.2d 956, 959 (2d Cir.1976), *rev'd on other grounds sub nom. United States v. New York Telephone Co.*, 434 U.S. 159, 164, 168, 98 S.Ct. 364, 368, 370, 54 L.Ed.2d 376 (1977) ("The Court of Appeals . . . concluded that district courts have the power, either inherently or as a logical derivative of Fed.Crim.Proc. 41, to authorize pen register surveillance upon an adequate showing of probable cause." "We . . . agree with the Court

of Appeals that the District Court had power to authorize the installation of the pen registers."); *United States v. Southwestern Bell Telephone Co.*, 546 F.2d 243, 245-46 (8th Cir. 1976), *cert. denied*, 434 U.S. 1008, 98 S.Ct. 716, 54 L.Ed.2d 750 (1978); *cf. United States v. Giordano*, 416 U.S. 505, 554, 94 S.Ct. 1820, 1845, 40 L.Ed.2d 341 (1974) (Powell, J., concurring in part and dissenting in part) (permissibility of search device not regulated by statute "depends entirely on compliance with the constitutional requirements of the Fourth Amendment").

Second, though Rule 41 expressly mentions only "documents, books, papers and any other tangible objects," it is clear that both the Rule and the Fourth Amendment extend to searches for and seizures of intangibles as well. *See United States v. New York Telephone Co.*, 434 U.S. 159, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977). In *New York Telephone*, the Court considered a warrant authorizing the use of pen registers that would disclose numbers called from a given telephone line. The Court rejected the contention that a warrant could not lawfully authorize a search for such intangibles, stating that "Rule 41 is not limited to tangible items but is sufficiently flexible to include within its scope electronic intrusions authorized upon a finding of probable cause." *Id.* at 169, 98 S.Ct. at 370. It noted that what is seized in such an endeavor is information, finding that the

above-quoted language of Rule 41(b) was

> broad enough to encompass a "search" designed to ascertain the use which is being made of a telephone suspected of being employed as a means of facilitating a criminal venture and the "seizure" of evidence which the "search" of the telephone produces. Although Rule 41(h) defines property "to include documents, books, papers and any other tangible objects," it does not restrict or purport to exhaustively enumerate all the items which may be seized pursuant to Rule 41.

Id. (footnote omitted).

> The seizure of intangible evidence has been explored principally in the context of the interception of conversations. *See, e.g., Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 682, 5 L.Ed.2d 734 (1961) (conversations overheard by means of microphone touching heating duct); *Katz v. United States*, 389 U.S. 347, 353, 88 S.Ct. 507, 512, 19 L.Ed.2d 576 (1967) (telephone conversations overheard by means of listening device attached to outside of public telephone booth); *Berger v. New York*, 388 U.S. 41, 54-60, 87 S.Ct. 1873, 1881-84, 18 L.Ed.2d 1040 (1967) (conversations intercepted by wiretap). The principle that neither Rule 41 nor the Fourth Amendment prohibits seizure of intangible property has been applied by the

Supreme Court to uphold the interception of nonverbal auditory information, such as that gained through the use of pen registers, *see United States v. New York Telephone Co.*, 434 U.S. at 169-70, 98 S.Ct. at 370-71, and that gained through the placement of location-monitoring beepers in movable property, *see United States v. Knotts*, 460 U.S. 276, 285, 103 S.Ct. 1081, 1087, 75 L.Ed.2d 55 (1983); *see also United States v. Karo*, 468 U.S. 705, 715, 104 S.Ct. 3296, 3303, 82 L.Ed.2d 530 (1984) (beeper).

This principle has also been applied by this Court to uphold a warrant authorizing the gathering of visual information through the use of a video camera. *See United States v. Biasucci*, 786 F.2d 504, 509 (2d Cir.), *cert. denied*, 479 U.S. 827, 107 S.Ct. 104, 93 L.Ed.2d 54 (1986); *accord United States v. Torres*, 751 F.2d at 883 (upholding warrant authorizing television surveillance of "safe house"); *see also United States v. Taborda*, 635 F.2d 131, 139 (2d Cir.1980) (warrant required for viewing of private area through telescope).

Given these authorities, we reject Villegas's contention that the district court had no power to issue a search warrant pursuant to which only intangible evidence would be seized. *Accord United States v. Freitas*, 800 F.2d 1451, 1455 (9th Cir.1986) (ruling that search without-physical-seizure warrant was

> authorized, though not validly issued because it (1) failed to make any provision for notice, and (2) lacked particularity as to the intangible property to be seized); *see also United States v. Freitas*, 856 F.2d 1425, 1433 (9th Cir. 1988).

United States v. Villegas, supra at 1334-1335.

Applying the same rationale to the unusual facts of the instant case, we hold that the suppression court erred when it determined that Pa.R.Crim.P. 2002 did not permit the issuance of a search warrant authorizing police to enter the Bagley residence to conduct inspections and testing, to recreate certain events, and to take photographs or videotape things located therein. The rule permits a warrant to be issued for the taking of photographs and the testing of physical evidence in the home. Therefore, the court erred when it suppressed evidence obtained pursuant to these warrants; and that portion of its order must be reversed.

The suppression court also suppressed the receptacle, the tape wrapped around the receptacle and the circuit breaker which had been physically seized by police during the execution of search warrant no. 13665. The court reasoned that the warrant had not authorized police to seize any physical evidence and only permitted inspection and testing. Reading the warrant in a common sense and nontechnical manner, however, suggests that the electrical system of the house was identified by the warrant as the evidence to be seized. Although it would not have been practical for police to seize the entire electrical system of the Bagley home, such things as a receptacle and circuit breaker could reasonably be the subject of seizure pursuant to warrant. While it is true that the warrant itself identified the evidence to be searched for and seized as "Examination and Inspection of the Electrical System," the

affidavit of probable cause, which was incorporated by reference and attached to the warrant, specifically listed as objects of the search the wall outlets and circuit breakers associated with the electrical supply to the master bedroom and bathroom of the Bagley house. Thus, although the warrant may have been awkwardly worded, it provided police with authority to seize specific portions of the electrical system which had been identified therein. Even where the description of things to be searched for and seized by the warrant is defective, suppression will not be required where an adequate description is contained in the affidavit of probable cause and the affidavit has been incorporated by reference and is attached to the warrant. See: *United States v. Johnson*, 690 F.2d 60, 64-65 (3d Cir. 1982), *cert. denied*, 459 U.S. 1214, 103 S.Ct. 1212, 75 L.Ed.2d 450 (1983). See also: *United States v. Washington*, 852 F.2d 803, 805 (4th Cir. 1988), *cert. denied*, 488 U.S. 974, 109 S.Ct. 512, 102 L.Ed.2d 547 (1988); *United States v. Leary*, 846 F.2d 592, 603 (10th Cir. 1988); *United States v. Weinstein*, 762 F.2d 1522, 1531-1532 (11th Cir. 1985), *cert. denied*, 475 U.S. 1110, 106 S.Ct. 1519, 89 L.Ed.2d 917 (1986).

Finally, pursuant to search warrant no. 12505, the police seized letters and other documents from the Bagley home. The suppression court held that these items were not evidence of a crime and, therefore, could not be seized pursuant to the warrant. The court reasoned as follows:

> Pursuant to warrant No. 12505, the police also seized various letters, envelopes, telephone bills, a baggage claim check, a name tag, notes, an address book and papers with various phone numbers from the Bagley residence. A review of the affidavit of probable cause submitted in support of the application for this warrant

> shows that none of these items constituted contraband, fruits of a crime, things criminally possessed, property used as the means of committing a criminal offense or property constituting evidence of the commission of a criminal offense. Instead, seizure of these items was sought "... to determine those individuals who were likely to be the closest friends of the decedent..." Under Rule 2002, a search warrant may not be issued for such broad investigatory purposes, and the items seized pursuant to warrant No. 12505 must be suppressed.

We agree with the suppression court that the documentary evidence seized pursuant to search warrant no. 12505 did not constitute evidence of the commission of a crime. Indeed, the affidavit of probable cause stated that police were seeking the documentary evidence named in the warrant because, during their investigation, they had been unable to determine the identity of Mrs. Bagley's closest friends. The failure to identify the victim's closest friends, however, did not provide police with probable cause to believe that the sought after documents were in any way connected to the murder of Mrs. Bagley. Moreover, although the warrant specified documents addressed to or by Mrs. Bagley, police also seized items addressed to appellee. These were not within the scope of the warrant. For these reasons, we affirm that part of the suppression court's order which excluded documentary evidence seized pursuant to search warrant no. 12505.

Our conclusion that some of the evidence seized pursuant to search warrant no. 12505 was properly suppressed does not prevent our reversing the order suppressing evidence pertaining to the electrical system. The doctrine of severance mandates that invalid

portions of a search warrant may be stricken and the remaining portions held valid, as long as the remaining portions of the warrant describe with particularity the evidence to be seized. See: *United States v. Spilotro,* 800 F.2d 959, 967-968 (9th Cir. 1986); *United States v. Gomez-Sato,* 723 F.2d 649, 654 (9th Cir. 1984), *cert. denied,* 466 U.S. 977, 104 S.Ct. 2360, 80 L.Ed.2d 831 (1984). See also: *United States v. Cardwell,* 680 F.2d 75, 78 (9th Cir. 1982); *Commonwealth v. Casuccio,* 308 Pa.Super. 450, 467-468, 454 A.2d 621, 629-630 (1982); *Aday v. Superior Court,* 55 Cal.2d 789, ___, 13 Cal.Rptr. 415, 420, 362 P.2d 47, 52 (1961). Where a search warrant authorizes seizure of some items for which there is probable cause and other items for which there is no probable cause, the warrant is not wholly invalid. In such cases, suppression will be required only of the evidence which was seized without probable cause. See: *United States v. Diaz,* 841 F.2d 1, 4 (lst Cir. 1988); *United States v. Freeman,* 685 F.2d 942, 952-953 (5th Cir. 1982). See also: *United States v. Riggs,* 690 F.2d 298, 300-301 (lst Cir. 1982); *United States v. Christine,* 687 F.2d 749, 758-760 (3d Cir. 1982). Instantly, search warrant no. 12505 was based on probable cause to examine the electrical system, which was particularly described as the object of the search. Therefore, the evidence obtained with respect to the electrical system is not subject to suppression merely because the warrant also authorized a search for documents without a showing of probable cause therefor.

To summarize, we hold that evidence seized from the Bagley home on March 26, 1989 was lawfully obtained by police pursuant to appellee's voluntary consent, even though search warrant no. 12504 was invalid. We hold also that the evidence obtained by police via inspection and testing of the electrical system, recreation of appellee's version of his wife's death, and the taking of photographs and videotape of the bathroom and master bedroom areas of the Bagley house, as well as the physical seizure of

specified portions of the electrical system, were properly authorized by search warrants nos. 13665, 12505 and 17105. Insofar as the suppression court ordered this evidence excluded, therefore, its order must be reversed. Insofar as the court suppressed documentary evidence seized without probable cause pursuant to warrant no. 12505, however, its order must be affirmed.

Order reversed in part, affirmed in part and remanded for further proceedings consistent with the foregoing Opinion. Jurisdiction is not retained.

KELLY, J., files a Concurring Opinion

Appendix B

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1328 Philadelphia 1990

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES BAGLEY.

Appellant

Appeal from the Order April 04, 1990, in the Court of Common Pleas of Delaware County, Criminal, No. 8188 of 1989

BEFORE: WIEAND, KELLY, and CERCONE, JJ.

CONCURRING OPINION BY KELLY, J.:

I join in all aspects of the majority's well reasoned opinion save its discussion of the validity of search warrant No. 12504.

That a magistrate may not issue a search warrant without probable cause is axiomatic. In determining whether an affidavit is adequate to establish probable cause, the question to be answered is not whether there is sufficient evidence to prove guilt, but rather whether it is reasonably probable that the crime has been committed. *Commonwealth v. DeLuca*, 230 Pa.Super. 390, 397, 326 A.2d 463, 467 (1974). *See also Alabama v. White*, 496 U.S. ___, ___, 110 S.Ct. 2412, 2416, 110 L.Ed.2d 301, 308 (1990) (*quoting United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1, 10 (1989)). Information contained within the affidavit "is to be viewed with a common sense, nontechnical ungrudging, and

positive attitude." *Commonwealth v. Edwards*, 493 Pa. 281, 290, 426 A.2d 550, 554 (1981)(citing *Commonwealth v. Simmons*, 450 Pa. 624, 301 A.2d 819 (1973)). In resolving doubtful or marginal cases, our Supreme Court has instructed that courts should determine the answer by the preference accorded to warrants. *Commonwealth v. Matthews*, 446 Pa. 65, 71, 285 A.2d 510, 513 (1971); *Commonwealth v. DeLuca, supra*, 230 Pa.Super. at 395, 326 A.2d at 466. Finally, courts must pay due deference to the magistrate's determination of whether probable cause has been established. *Spinelli v. United States*, 393 U.S. 410, 419, 89 S.Ct. 584, 591, 21 L.Ed.2d 637, 645 (1969); *Commonwealth v. Matthews, supra*, 446 Pa. at 71-72, 285 A.2d at 513.

The affidavit of probable cause used to support the instant search warrant contained the following facts: 1) appellee brought the dead body of his wife to the hospital with the explanation that his wife had been accidently electrocuted while bathing in their home's hot tub when an electric light fell into the water; 2) subsequent examination of the body revealed a laceration above the deceased's right eye and various bruises about her body; 3) appellee claimed that he had "torn the room apart" where his wife had died before he left the home and was thinking of "setting fire to the house" upon his return[1]; and 4) the police became aware of these facts via a phone call from a hospital nurse. In my opinion, viewing these facts

1. Although the issue is not before us, such facts might well have justified the police to search or at least secure the scene based on exigent circumstances. *See Commonwealth v. Ehrsam*, 379 Pa.Super. 337, 342-48, 549 A.2d 1323, 1328 (1988) (fire investigation of three hours without search warrant is reasonable in order to discover and preserve evidence); *Commonwealth v. Holzer*, 480 Pa. 93, 102, 389 A.2d 101, 106 (1978)("exceptions [to the warrant requirement] arise where the need for prompt police action is imperative, [if] evidence sought to be presented is likely to be destroyed, or secreted from investigation. . . ."). *Cf. Mincey v. Arizona*, 457 U.S. 385, 394, 98 S.Ct. 2408, 214, 57 L.Ed.2d 290, 301 (1978)(search warrant necessary where police guard at door, and no emergency or threat of destruction of evidence.)

together in a common sense, ungrudging and positive way, it was at least *reasonably probable* that: 1) appellee brought his dead wife to the hospital because he didn't want the police to investigate the scene of her death; 2) appellee's "electrocution" explanation was inconsistent with (or at least insufficient to account for) the subsequent examination of her body because appellee was lying with regard to her demise; and 3) that appellee had torn apart the room in which his wife had died *before* he brought her to the hospital because he was more concerned with destroying evidence of her fatal "accident" than he was with seeking emergency medical care. Granting due deference to the magistrate's determination, and considering the preference accorded to warrants, it was not error, in my view, for the magistrate to have found that it was at least *reasonably probable* that appellee's wife had been slain and that appellee was involved in the act.[2]

Nonetheless, I agree with the majority's ultimate conclusion that the search warrant was invalid. Our Constitution, as well as the United States Constitution, proscribes warrants which do not describe with sufficient particularity the place(s) to be searched and the thing(s) to be seized. *Commonwealth v. Grossman*, 521 Pa. 290, 297-98, 555 A.2d 896, 899 (1989). While I agree with the Commonwealth that we must consider peculiar difficulties of

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2. The instant warrant's failure to specifically state the crime committed, in violation of Pa.R.Crim.P. 2006(e), 42 Pa.C.S.A. is not, in my opinion, a fatal defect. Such technical deficiencies, do not rise to the level of constitutional violations especially where, as here, it is obvious from context which crime was at issue. *See Commonwealth v. O'Shea*, 523 Pa. 384, 399, 567 A.2d 1023, 1029 (1989); *Commonwealth v. Mason*, 507 Pa. 396, 407, 490 A.2d 421, 426 (1985). *Cf. Commonwealth v. Schilling*, 312 Pa.Super. 43, 48, 458 A.2d 226, 229 (1983)("Pa.R.Crim.P. 2005 has not been interpreted in such a hypertechnical manner so as to equate all errors to be violative of one's Fourth Amendment rights).

complying with this requirement,[3] I remain mindful that the very impetus for the Fourth Amendment as well as Article I, section 8 of our constitution, was the issuance of general writs of assistance which authorized searches only marginally more broad than that authorized herein. *See Wakely v. Hart*, 6 Binn. 315, 317-18 (1814);

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3. The difficulty in complying with and the effect of enforcing a strict particularity requirement in investigating cases such as the instant one may be briefly summarized as follows. Normally, police are called to the scene of a potential murder and briefly conduct an investigation of the crime scene, searching for whatever evidence may have been left behind. Clues discovered during this initial crime scene search often include incriminating yet evanescent and easily destroyable evidence such as bloodstains, fingerprints, and signs of entry and egress. These in turn are often later used to justify another, more intrusive search of the crime scene authorized by warrant.

Where, however, the victim's body is removed from a suspect's home before the police are aware of the death, police have no opportunity to conduct the initial investigation of the scene of the death, and no constitutional authority to conduct a search of the recent crime scene once they become aware of the death absent a search warrant, exigent circumstances, or consent. *Mincey v. Arizona*, 457 U.S. 385, 98 S.Ct. 2408, 7 L.Ed.2d 290 (1978). In such cases police may reasonably believe that a murder has been committed but be sufficiently ignorant as to how it was committed to specify with particularity any items they may wish to seize or any places they may wish to search. To construe the particularity requirement strictly in this situation, may be to prohibit search of the scene entirely.

Our constitutions mandate no such result. Although the particularity requirement of our constitution has been construed more rigidly than that of its federal counterpart, *see Commonwealth v. Grossman*, 521 Pa. 290, 296-99, 555 A.2d 896, 899-900 (1989), I believe the requirement must and does retain sufficient flexibility to account for the peculiar circumstances involved in procuring a warrant where there has been no initial opportunity to search the crime scene. *See e.g. In Re Search Warrant B-21778*, 513 Pa. 429, 436-37, 521 A.2d 422, 426 (1987) (where investigation has no legitimate means of narrowing down the location of certain items to be seized particularity requirement not violated). Both the Fourth Amendment and Article I, Section 8 are designed to prevent *unreasonable* searches and seizures. Reasonableness is of course dependent upon circumstances. *See Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527

(Cont'd)

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Commonwealth v. Rubin, 82 Pa.Super. 315, 319-20 (1923); *Commonwealth v. Schaeffer*, 370 Pa.Super. 179, 238, 536 A.2d 354,

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(Cont'd)

(1983); *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921 (1985); *Commonwealth v. Stamps*, 493 Pa. 530, 537, 427 A.2d 141, 144 (1981). Where it is reasonably probable that a crime has been committed but police are not sufficiently certain how it was accomplished, it is necessary and thus reasonable to construe less rigidly the particularity requirement to allow police at least some access to the recent crime scene. Indeed, the United States Supreme Court has suggested:

> It may well be that the circumstances described by the Arizona Supreme Court [search of the scene of a recent homicide limited to determining circumstances of death] *would usually be constitutionally sufficient to warrant a search of substantial scope*. But the Fourth Amendment requires that this judgment in each case be made in the first instance by a neutral magistrate.

Mincey v. Arizona, 437 U.S. 385, 395, 98 S.Ct. 2408, 2415, 57 L.Ed.2d 290, 302 (1978)(emphasis added). Several other jurisdictions have recognized this as well. *See e.g. United States v. Kepner*, 843 F.2d 755, 762, 763 (3rd Cir. 1988) (warrant authorizing search for "documents, records and personal effect of Thomas Kepner" upheld as constitutional); *United States v. Johnson*, 541 F.2d 1311, 1314 (8th Cir. 1976) ("the degree of specificity required when describing the goods to be seized may necessarily vary according to the circumstances and type of items involved"); *Commonwealth v. Freiberg*, 405 Mass. 282, 299, 540 N.E.2d 1289, 1300 (1989)(Because "police officers did not know what instrument had caused the victim's severe head wounds . . . the police could not be expected to describe with detailed precision the items to be seized when the exact characteristics of those items were not known to them."); *State v. Repp*, 117 Wis.2d 143, 153, 342 N.W.2d 771, 776 (1983)(search warrant authorizing search for " 'things used in the commission of or [which] may constitute evidence of a crime, to wit; murder' was sufficient."); *State v. Hodges*, 43 Or.App. 547, ___ , 603 P.2d 1205, 1207, 1208 (1979)(search warrant authorizing seizure of "any and all evidence which may relate to the possible murder of Sandra Hodges" particular and constitutional when "the police do not know that instrumentalities and other evidence of crime probably exist and they know the premises upon which such items will be found").

383-84 (1987)(Kelly, J., concurring and dissenting). After due consideration of the difficulties in meeting the particularity requirement faced herein, I am not convinced that the instant search warrant's authorization to search and seize "any items which may be related to death of Yvonne Bagley," could not have been made less broad under the facts available to the applicants herein, *e.g.* by authorizing the search of only the room in which appellee claimed his wife had been electrocuted and authorizing the search for only such electrical items which may have caused her death or objects which could have inflicted the cut above her eye. I am therefore compelled to agree with the majority that the warrant issued was too broad. Accordingly, I concur.

Appendix B

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1328 Philadelphia, 1990

COMMONWEALTH OF PENNSYLVANIA

vs.

CHARLES BAGLEY,

Appellee

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of DELAWARE County be, and the same is hereby REVERSED IN PART, AFFIRMED IN PART AND REMANDED FOR FURTHER PROCEEDINGS. JURISDICTION IS NOT RETAINED.

BY THE COURT:

s/ illegible
PROTHONOTARY

Dated: July 30, 1991

APPENDIX C — FINDINGS OF FACT IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA CRIMINAL DIVISION FILED APRIL 4, 1990

IN THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

No. 8188-89

COMMONWEALTH OF PENNSYLVANIA

v.

CHARLES BAGLEY

Joel Goldstein, Esquire, Deputy District Attorney, for the Commonwealth
Neil E. Jokelson, Esquire, and Jeremy T. Ross, Esquire, Attorneys for the Defendant

Levy, J. Date filed: April 4, 1990

FINDINGS OF FACT

1. On March 26, 1989, the police were advised by employees of Paoli Memorial Hospital that the defendant had brought his wife into the emergency room of the hospital during the early morning hours and stated that an electrical fixture had fallen into a tub causing her to be electrocuted. The police were also told that the defendant said he did not want the police notified and that he intended to burn down his house. N.T., 1/11/90, p. 44.

2. At approximately noon on March 26, 1989, Detective Michael Honicker of the Delaware County Criminal Investigation Division went to the defendant's residence at 240 Radnor-Chester

Road, Radnor, Pennsylvania. Detective Honicker was accompanied by a uniformed officer of the Radnor Township Police Department. N.T. pp. 44-45.

3. Detective Honicker went to the defendant's residence for the purpose of taking a statement from the defendant concerning the death of his wife, and to await the arrival of a search warrant, the application for which was being prepared, in order to "process the residence as a crime scene." N.T. pp. 43-44.

4. Upon arriving at the defendant's residence, Detective Honicker knocked on the door which was answered by a person other than the defendant. Detective Honicker identified himself and asked to speak to Mr. Bagley. N.T. p. 45.

5. The defendant walked out and met Detective Honicker and the uniformed officer who was with him, and he led them back to the living room area of the house. Upon meeting the defendant, Detective Honicker again identified himself and told the defendant that his purpose in being there was to investigate the death of defendant's wife. N.T. pp. 45-46.

6. While speaking to defendant, Detective Honicker noted the presence of other people in the house and asked defendant why those persons were present. The defendant told the detective that they were in the process of cleaning the upstairs floor of the house. N.T. p. 46.

7. Detective Honicker requested that defendant summon downstairs the people who were on the upstairs floor of the house and instruct them to stop their cleaning work. Detective Honicker explained to defendant that he wanted the cleaning stopped ". . . because we were in the process of obtaining a search warrant to process the residence for a crime scene." N.T. p. 46.

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8. The defendant complied with Detective Honicker's direction and called the people downstairs. He further told Detective Honicker that a search warrant would not be needed, but Detective Honicker advised the defendant that it was "our policy." N.T. pp. 46-47.

9. When people in defendant's house came downstairs, they were taken to another area of the house by the uniformed officer who accompanied Detective Honicker. N.T. p. 47.

10. Detective Honicker was alone with the defendant in the living room area of the house. He advised the defendant of his Miranda warnings, and asked defendant if he wished to give a statement concerning his wife's death. N.T. p. 47.

11. The defendant told Detective Honicker that he would give a statement, and he proceeded to explain his version of the events surrounding the death of his wife. N.T. p. 47.

12. During the course of making his statement, the defendant told Detective Honicker that it would be easier to explain the events if he showed the detective what hapened; with Detective Honicker's agreement, the defendant proceeded to take Detective Honicker to the various areas of the house where the events had occurred. N.T. p. 48.

13. The defendant took Detective Honicker into the bedroom and bathroom areas. While in the bathroom area, Detective Honicker noticed that various fixtures and faucets were missing, and he was shown by the defendant the electrical outlet into which the defendant claimed the soldering gun which had caused his wife to be electrocuted was plugged. N.T. pp. 49-50.

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14. After showing Detective Honicker various areas of the house, the defendant then took him outside. The defendant told him that he had attempted to destroy the soldering gun and electrical wire by burning them in the fireplace, and had then removed them from the fireplace and put them outside in the trash with other items removed from the bathrom. N.T. p. 48-49.

15. The defendant then showed Detective Honicker the items removed from the bathroom and the charred remains of the soldering gun and electrical wire which were in bags standing next to trash cans outside the house. N.T. p. 49.

16. Detective Honicker and the defendant returned to the house and sat down so that the detective could prepare a written statement of the defendant's version of the events surrounding his wife's death. N.T. p. 50.

17. While Detective Honicker was preparing the written statement, other detectives and police officers arrived at the Bagley residence with search warrant No. 12504 at approximately 1:15 to 1:30 P.M; N.T. p. 50.

18. The warrant was read to the defendant, and a search of the premises was then conducted. N.T. pp. 97 and 102.

19. Search warrant No. 12504 identified the items to be searched for and seized as "Any items which may be related to the death of Yvonne Bagley"; and the affidavit of probable cause submitted in support of the application for the warrant stated that the warrant was needed in order to process the Bagley residence ". . . for any evidence such as fiber, hair, prints and any other items which may have to do with the suspicious death of Yvonne Bagley." (Exhibit C-1).

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20. Search warrant No. 12504 identified the violation involved as "suspicious death." (Exhibit C-1).

21. During the course of his conversation with the defendant, Detective Honicker asked whether or not defendant's wife had life insurance, and the defendant advised that she had a policy in the amount of $250,000. N.T. p. 52.

22. Detectives of the Delaware County Criminal Investigation Division received information concerning insurance policies issued to the defendant and his wife. This information was obtained in response to telephone inquiries made by the detectives to the following insurance entities: Shevland Insurance, A.L. Williams Insurance and Equitable Insurance. N.T. pp. 53-56 and 106-110.

23. Search warrants Nos. 13667, 17101 and 17104 sought mortgage and bank records of the defendant and his wife from the Bryn Mawr Trust Company, Citicorp Mortgage Company and the Continental Bank. The applications for these warrants were supported by affidavits of probable cause which outlined the circumstances surrounding the death of Yvonne Bagley and set forth information received by the affiants concerning the existence of various mortgages on the Bagley's property and the Bagley's financial condition. (Exhibits C-6, C-7 and C-8).

24. Search warrant No. 13665 identified the items to be searched for and seized as "Examination and inspection of the electrical system, photographs, shelf and cardboard box that was in the Bathroom on the shelf." (Exhibit C-2).

25. The inventory report of property seized pursuant to warrant No. 13665 states that the following items were seized: 1

duplex receptacle, tape wrapped around receptacle, 1 20-amp circuit breaker, 1 roll 24 photographs taken of scene and 1 videotape of scene. (Exhibit C-2).

26. The application for search warrant No. 13669 was supported by an affidavit of probable cause which outlined the circumstances surrounding the suspicious death of Yvonne Bagley, various financial transactions and involvements of the defendant, the fact that defendant was about to be terminated from his place of employment leaving him with no visible means of income, and the absence of any financial records of the defendant. (Exhibit C-5).

27. Search warrant No. 12505 identified the items to be searched for and seized as "Wires in Bathroom adjacant (sic) to Master Bedroom for inspection and testing. Address book of decedent, or letters to or from the decedent, a diary of the decedent, or other materials providing names and addresses of relatives or persons close to the decedent. Paint can which may contain or may have contained paint consisted (sic) with paint on the bathroom area adjacant (sic) to the Master Bedroom." (Exhibit C-4).

28. Pursuant to search warrant No. 12505, the police seized the following items from the Bagley residence: a letter dated April 4, 1989 signed by the defendant, an envelope from Selective Insurance, a telephone bill dated March 21, 1989, a Pan Am baggage claim ticket, a paper with passport information and a business card, an address book, a Century 21 name tag, a note attached to the front door of the house, two bathroom outlets, exposed wire from bathroom light fixtures, "phone numbers and addresses", a letter from Honeywell Protective Services and a letter from Barclay Bank. (Exhibit C-4).

29. Search warrant No. 17105 identified the items to be searched for and seized as follows: "to recreate and duplicate and

reconstruct the same circumstances of the death of Yvonne Bagley as it related to the electrical supply in the residence on the evening of her death. The use by her of the Jacuzzi (hot tub)." (Exhibit C-3).

DISCUSSION

As part of his omnibus pre-trial motion, defendant seeks the suppression of evidence. In the motion, defendant seeks to have the Court supress evidence seized pursuant to eight separate search warrants together with information obtained by the police through telephone inquiries concerning insurance policies issued to defendant and his wife. At the hearing on defendant's motion, the Commonwealth suggested that for discussion purposes, the warrants could be placed in four distinct categories, namely, 1) the initial search of the Bagley residence; 2) warrants for entry into the Bagley residence to examine physical evidence or to conduct tests and experiments; 3) warrants for record searches, and 4) a warrant for the seizure of computer equipment from the Bagley residence. We will separately discuss the merits of defendant's motion to suppress as to each of these categories and as to the obtaining of the insurance information.

I. WARRANT NO. 12504 — THE INITIAL SEARCH OF THE BAGLEY RESIDENCE.

Defendant contends that the evidence seized pursuant to warrant No. 12504 should be supressed because both the warrant and the application were defective on their face in two respects. First, the items to be searched for and seized were not identified with the required specificity and, second, there was no specification of a violation or crime having been committed.

The Pennsylvania Constitution requires that a warrant describe the items to be seized "as nearly as may be . . .". The clear

meaning of this language is that a warrant must describe the items to be seized as specifically as is reasonably possible. *Commonwealth v. Grossman*, __ Pa. __, 555 A.2d 896 (1989). The requirement that warrants shall particularly describe the things to be seized precludes general searches conducted pursuant to them, and it prevents the seizure of one thing under a warrant describing another. "As to what is to be taken, nothing is left to the discretion of the officer executing the warrant." Id. at p. 899 quoting *Marron v. United States*, 275 U.S. 192, 48 S. Ct. 74, 72 L.Ed 231 (1927).

The foregoing constitutional principle has been incorporated into the Pennsylvania Rules of Criminal Procedure which provide that the application for a search warrant shall "Identify specifically the items or property to be searched for and seized", and that the warrant itself shall "Identify specifically the property to be seized." Pa. R. Crim. P. 2005(b) and 2006(b).

A review of warrant No. 12504 and its application discloses that the items to be searched for and seized were described as follows: "Any items which may be related to the death of Yvonne Bagley." The affidavit of probable cause provided only a slight additonal degree of specificity by requesting that the warrant be issued to process the Bagley residence ". . . for *any evidence* such as fiber, hair, prints and *any other items which may have to do with the suspicious death of Yvonne Bagley.*" (Emphasis added.) These descriptions provide virtually no specificity whatsoever concerning the items to be searched for and seized, and the warrant gave almost unlimited discretion to the officers executing it to seize whatever they wished. on this basis alone, the warrant was fatally defective on its face and does not provide the legal basis for the seizure of items from the Bagley residence on March 26, 1989.

Furthermore, the warrant application was defective in another respect. Pa. R. Crim. P. 2006(e) provides that an application for a

search warrant shall "Specify or describe the crime which has been or is being committed." A review of the application for warrant No. 12504 shows that the violation is stated as being "suspicious death". These two words neither describe criminal conduct nor specify a statute that has been violated. Accordingly, the warrant application failed to comply with Rule 2006(e) and was defective on its face.

Apparently recognizing the deficiencies in warrant No. 12504 and its application, the Commonwealth has attempted to provide alternate grounds to support the legality of the search of the Bagley residence on March 26, 1989 and the seizure of items pursuant to that search. The Commonwealth contends that the search and seizures were made pursuant to voluntary consent given by the defendant. The record establishes that after being told by Detective Honicker that a warrant was being obtained to process the residence as a crime scene, the defendant stated that a search warrant would not be needed.

When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving tht the consent was in fact freely and voluntarily given. *Bumper v. North Carolina,* 391 U.S. 543, 88 S. Ct. 1788, 20 L.Ed 2d 797 (1968). This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority. *Id.* When a police officer displays a warrant or claims to possess one, and then asserts authority thereunder to search one's premises, the officer effectively declares his legal right to search and announces that the occupant has no right to resist that authority. *Commonwealth v. Banahasky,* 250 Pa. Super. 495, 378 A.2d 1257 (1977). The submission by a person to a search under such circumstances can only be construed as an intention to abide by that authority and not as a voluntary consent to the search. *Id.* at p. 501.

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While the defendant in the instant case told Detective Honicker that a warrant would not be necessary to search the house and thereafter showed the detective various areas of the premises before the warrant arrived, defendant's statement and actions did not occur until after he was advised that a search warrant was being obtained. Accordingly, at the time he made the statement to Detective Honicker and then showed him through various areas of the premises, the defendant was aware that a search of the residence was inevitable. Under these circumstances, we conclude that defendant's statement and actions must be viewed as acquiescence in Detective Honicker's claim of lawful authority to search the residence. While we recognize that the instant case is somewhat factually distinguishable from *Bumper* and *Banahasky, supra*, in that Detective Honicker neither displayed a warrant to the defendant nor claimed to possess one at the moment of his arrival at the Bagley residence, but instead advised defendant that a warrant was being obtained, we are of the opinion that this factual difference is in reality of no legal significance. Detective Honicker's statement that a warrant was being obtained, and his reply to defendant's statement that one was not needed by stating that it was "our policy", permits no doubt in any reasonable person's mind that an assertion of lawful authority to conduct a search was being made. "When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion — albeit colorably lawful coercion. Where there is coercion there cannnot be consent." *Bumper v. North Carolina, supra.* It is abundantly clear and we hold that defendant did not freely and voluntarily consent to the search of his house by Detective Honicker on March 26, 1989.

In an effort to salvage its position, the Commonwealth next contends that the search of the Bagley residence on March 26, 1989

was justified on the basis of exigent circumstances. Although as a general rule, a search and seizure conducted without a warrant is deemed unreasonable for constitutional purposes, the warrant requirement is excused where exigent circumstances exist. *Commonwealth v. Holzer,* 480 Pa. 93, 389 A.2d 101 (1978). Such circumstances arise where the need for prompt police action is imperative, either because evidence sought to be preserved is likely to be destroyed or secreted from investigation or because there exists a threat of physical harm to police officers or other innocent individuals. *Commonwealth v. Ehrsam,* 355 Pa. Super. 40, 512 A.2d 1199 (1986) alloc. den. __ Pa. __, 527 A.2d 535 (1987).

No evidence exists in the instant case nor does the Commonwealth contend that any threat of physical harm existed either to police officers or to innocent individuals so as to justify a warrantless search of the Bagley residence. The Commonwealth does contend, however, that circumstances existed which made prompt police action imperative to preserve evidence which was likely to be destroyed or secreted from investigation. In support of this contention, the Commonwealth calls the Court's attention to two facts. First, that the defendant, while at Paoli Memorial Hospital, had stated to members of the hospital staff his intention to burn down his house. Secondly, the Commonwealth notes that upon arriving at the Bagley residence, Detective Honicker discovered that people were cleaning the upstairs portion of the house. The Commonwealth contends that these two facts constituted exigent circumstances that justified the police in conducting a warrantless search of the premises to preserve evidence from destruction. While either of these facts, viewed in isolation, might arguably constitutute circumstances which would justify the warrantless search of the Bagley residence, it would be improper to analyze these facts outside the context of the totality of the circumstances which occurred on March 26, 1989. An analysis of the totality of these circumstances establishes that shortly after Detective

Honicker entered the Bagley residence, there existed no danger that any evidence was likely to be destroyed or concealed from investigation.

When Detective Honicker arrived at the Bagley residence, it was apparent that the defendant had not burned down his house as he allegedly had threatened to do at the hospital. Furthermore, once Detective Honicker was in the presence of the defendant, there was no opportunity for him either to set the house on fire or to destroy evidence in any other manner. Thus, no action by the defendant created the existence of any circumstances which would justify a warrantless search of his house.

The Commonwealth also contends, however, that the presence of other people in the Bagley residence who were there for the purpose of cleaning the upstairs portion of the house created the danger of evidence being destroyed or concealed from investigation. A review of the evidence at the suppression hearing established, however, that upon being told that such activity was occurring, Detective Honicker asked the defendant to have the people stop cleaning and come downstairs to the first floor of the house. According to Detective Honicker, defendant complied with his request, and those persons came downstairs and were taken to another area of the house by the uniformed police officer who had accompanied Detective Honicker. Thus, as of the time defendant called the cleaning people down to the first floor, no danger whatsoever existed that any evidence would either be destroyed or secreted from investigation at the Bagley residence. Therefore, exigent circumstances did not exist to permit a warrantless search of the residence.

Finally, the Commonwealth also contends that the evidence seized from the Bagley residence pursuant to warrant No. 12504

should not be suppressed because the search and seizure were accomplished in good faith by officers who were acting in reasonable reliance upon a warrant issued by a neutral and detached magistrate. The obvious deficiencies on the face of the warrant, however, precludes us from concluding that the reliance of the officers executing the warrant was reasonable. The following language from *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L.Ed 2d 677 (1984) is instructive on the good faith argument raised by the Commonwealth:

> . . . We do not suggest, however, that exclusion is always inappropriate in cases where an officer has obtained a warrant and abided by its terms. 'Searches pursuant to a warrant will rarely require deep inquiry into reasonableness,' for 'a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search.' Nevertheless, the officer's reliance on the magistrate's probable-cause determination and on the technical sufficiency of the warrant he issues must be objectively reasonable and it is clear that in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued. . . . Finally, *depending on the circumstances of the particular case, a warrant may be so facially deficient — i.e., in failing to particularize the place to be searched or the things to be seized — that the executing officers cannot reasonably presume it to be valid.*

468 U.S. at 922-23, 104 S. Ct. at 3420-3421, 82 L.Ed 2d at 698-699. (Citations and footnotes omitted; emphasis added.)

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We conclude that the obvious facial deficiencies in warrant No. 12504 are of such a nature that the officers executing the warrant could not reasonably presume it to be valid, and therefore the evidence seized from the Bagley residence pursuant to the warrant may not be saved from suppression based upon the officers' good faith reliance upon the warrant's validity.

Accordingly, in view of the facial deficiencies in warrant No. 12504, the absence of a free and voluntary consent by the defendant to a warrantless search of his residence, the lack of exigent circumstances to justify the warrantless search and the existence of factors which preclude a finding of good faith reliance by the executing officers on the validity of the warrant, we conclude that defendant's motion to suppress evidence must be granted with respect to the evidence seized pursuant to warrant No. 12504.

II. WARRANTS NOS. 12505, 13665 and 17105 — ENTRY TO THE BAGLEY RESIDENCE FOR PURPOSES OF EXAMINING PHYSICAL EVIDENCE AND/OR CONDUCTING TESTS AND EXPERIMENTS.

Defendant seeks to have the Court suppress evidence seized or obtained pursuant to the above three warrants on the basis that the purposes for the issuance of those warrants, namely, the examination, inspection and testing of the electrical system at the Bagley residence and the recreation of the events surrounding the death of Yvonne Bagley, may not properly be accomplished by a search warrant.

Pa. R. Crim. P. 2002 sets forth the purposes for which a search warrant may be issued. The rule states as follows:

> A search warrant may be issued to search for and to seize:

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a) contraband, the fruits of a crime or other things criminally possessed: or

b) property which is or has been used as the means of committing a criminal offense: or

c) property which constitutes evidence of the commission of a criminal offense.

Neither the examination, inspection and testing of an electrical system nor the recreation and duplication of circumstances surrounding a victim's death qualifies under any of the purposes authorized by Rule 2002. A search warrant serves to authorize the seizure of identifiable and existing property. It is not available as a general investigatory tool to be used in place of a grand jury. *In Re Casale*, __ Pa. __, 517 A.2d 1260 (1986). Accordingly, we conclude that any evidence obtained pursuant to warrants 12505, 13665 and 17105 as the result of examination, inspection and testing of the electrical system at the Bagley residence or the recreation of the events surrounding the death of Yvonne Bagley must be suppressed.

Pursuant to warrant No. 13665, the police also took twenty-four photographs of the Bagley residence and a videotape of the scene. These items likewise are not authorized under the purposes set forth in Rule 2002 and also must be supressed. Furthermore, the inventory receipt for warrant No. 13665 shows that a duplex receptacle, tape wrapped around the receptacle and a "20 amp circuit breaker" were seized from the Bagley residence. A reading of the warrant application shows, however, that the identification of items to be searched for and seized states the following, "Examination and inspection of the electrical system, photographs, shelf and cardboard box that was in the Bathroom on the shelf." The warrant application does not seek the seizure of any portions of the

electrical system of the house. Accordingly, the seizure of the receptacle, tape and circuit breaker were not authorized by the warrant and these items also must be suppressed.

Pursuant to warrant No. 12505, the police also seized various letters, envelopes, telephone bills, a baggage claim check, a name tag, notes, an address book and papers with various phone numbers from the Bagley residence. A review of the affidavit of probable cause submitted in support of the application for this warrant shows that none of these items constituted contraband, fruits of a crime, things criminally possessed, property used as the means of committing a criminal offense or property constituting evidence of the commission of a criminal offense. Instead, seizure of these items was sought " . . . to determine those individuals who were likely to be the closest friends of the decedent . . ." Under Rule 2002, a search warrant may not be issued for such broad investigatory purposes, and the items seized pursuant to warrant No. 12505 must be suppressed.

III. WARRANTS NOS. 13667, 17101 AND 17104 — RECORD WARRANTS FOR MORTGAGE AND BANKING INFORMATION.

Defendant seeks to have the Court suppress evidence seized by the police from three financial institutions, namely, the Bryn Mawr Trust Company, Citicorp Mortgage Company and Continental Bank. The material seized consisted of various banking and mortgage records and documents of the defendant and his wife. Defendant contends that the evidence should be suppressed because the search warrants which authorized the seizure of these items were not supported by probable cause, and, furthermore, the material seized was neither evidence of a crime nor an instrumentality of a homicide.

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A review of the affidavits of probable cause submitted in support of the application for these warrants shows that the affiants, after detailing the circumstances surrounding the death of Yvonne Bagley and the investigation of those circumstances, explain discoveries made by investigators of the existence of various mortgages and loans made by the defendant and his wife and held by the institutions named in the warrant. The affidavits assert the necessity of obtaining the various documents sought in order to ascertain the financial condition of the defendant and what effect, if any, his wife's death would have upon that situation. Probable cause is present where the facts and circumstances within the affiant's knowledge and of which he has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in having the belief that a search should be conducted. *Commonwealth v. Bonasorte,* 337 Pa. Super. 332, 486 A.2d 1361 (1984). We conclude that the affidavits submitted in support of these warrants, which established that the defendant's wife died under suspicious circumstances and that the defendant had a substantial degree of indebtedness, were sufficient to provide probable cause for the search and seizure of the various mortgage and banking records.

We reject defendant's contention that these materials were not evidence of a crime. The materials seized potentially provide evidence of a motive the defendant may have had to kill his wife. This evidence arguably constituted evidence of a crime. Accordingly, defendant's motion to suppress evidence should be refused with respect to the evidence seized pursuant to warrants Nos. 13667, 17101 and 17104.

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IV. WARRANT NO. 13669 — WARRANT FOR THE SEIZURE OF COMPUTER EQUIPMENT FROM THE BAGLEY RESIDENCE.

Defendant seeks to have the computer equipment and materials seized from his residence pursuant to this warrant suppressed because he contends that probable cause did not exist to support the issuance of the warrant, and the material seized did not constitute evidence of the instrumentality of a crime.

A review of the affidavit of probable cause submitted in support of the warrant application shows that the affiants outlined information concerning various financial transactions and related involvements of the defendant. The affidavit also shows that the defendant was about to be terminated from his employment and thus left with no visible means of income. The affidavit further states that the police were unable to discover any evidence of financial record-keeping by defendant, and that the home computer system in the Bagley house was used for correspondence purposes. Based upon this information, we conclude that probable cause existed to support the issuance of the search warrant to seize the computer equipment and related materials from the Bagley residence. We further conclude that evidence of financial instability on defendant's part may have constituted a motive to kill Yvonne Bagley, and as such the material seized potentially is evidence of a crime. Accordingly, we conclude that defendant's motion to suppress should be denied as to evidence seized pursuant to warrant No. 13669.

V. INSURANCE INFORMATION OBTAINED AS THE RESULT OF TELEPHONE INQUIRIES BY THE POLICE.

Defendant seeks to have the Court suppress information provided to the police in response to their telephone inquiries made

to three insurance entities: A.L. Williams, Equitable Insurance and Shevland Insurance. The information related to insurance policies issued to the defendant and his wife, and consisted of oral responses to questions posed by the police and the providing of certain documents. Defendant contends that both the verbal and documentary information received by the police were the result of a warrantless search and seizure. In support of this contention, defendant cites the case of *Commonwealth v. DeJohn*, 486 Pa. 32, 403 A.2d 1283 (1979). In *DeJohn*, the Pennsylvania Supreme Court held that bank customers have a legitimate expectation of privacy in records pertaining to their affairs kept by the bank, and that the seizure of defendant's records by the police pursuant to an invalid subpoena was improper. *DeJohn*, however, is inapposite to the instant case. While we do not disagree that an individual has as great an expectation of privacy in his insurance records as he has in his bank records, the police in the instant case, unlike *DeJohn*, did not obtain the information regarding defendant's insurance policies as the result of a search. The sole evidence in the record concerning the obtaining of this information is that police investigators called the three insurance entities, identified themselves, stated that they were investigating the defendant, and requested information concerning insurance policies issued to him and his wife. It is in response to these limited telephone inquiries that employees of the various entities provided verbal information to the investigators and, in some cases, sent copies of various insurance documents. Defendant has failed to cite any authority holding that a telephone inquiry by a police officer constitutes a search. In the absence of authority to that effect, we conclude that such action by the police is neither a search nor seizure. Accordingly, defendant's motion to suppress is refused as it relates to information obtained by police investigators in response to telephone inquiries made by them concerning insurance policies issued to defendant and his wife.

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CONCLUSIONS OF LAW

1. Search warrant No. 12504 did not comply with the Pennsylvania Rules of Criminal Procedure 2005(b) and 2006(b) and (e) by failing adequately to specify the items or property to be searched for and seized, and by failing to specify or describe any crime which was committed.

2. Defendant Charles Bagley did not freely and voluntarily consent to a search of his home on March 26, 1989.

3. Exigent circumstances did not exist on March 26, 1989 so as to justify a warrantless search of the Bagley residence.

4. The facial deficiencies of warrant No. 12504 were of such a nature that the officers executing the warrant could not, in good faith, reasonably rely upon the validity of the warrant.

5. The examination, inspection and testing of the electrical system at the Bagley residence, and the recreation of events surrounding Yvonne Bagley's death were not proper purposes for the issuance of search warrants Nos. 13665, 12505 and 17105.

6. The taking of photographs and a videotape of the Bagley residence pursuant to warrant No. 13665 was not an authorized purpose for the issuance of a search warrant.

7. The seizure of a duplex receptacle, tape wrapped around the receptacle and a 20 amp. circuit breaker was not authorized by warrant No. 13665.

8. The items seized pursuant to search warrant No. 12505 were not contraband, fruits of a crime, things criminally possessed,

property used as the means of committing a criminal offense or property constituting evidence of the commission of a criminal offense, and the seizure of those items was not authorized under the Pennsylvania Rules of Criminal Procedure.

9. Probable cause existed for the issuance of search warrants Nos. 13667, 17101 and 17104, and the materials seized pursuant to those warrants was authorized by the Pennsylvania Rules of Criminal Procedure.

10. Probable cause existed for the issuance of search warrant No. 13669, and the materials seized pursuant to that warrant was authorized by the Pennsylvania Rules of Criminal Procedure.

11. The oral information and documents provided to the police by the A.L. Williams, Equitable and Shevland Insurance entities were not the result of a search and seizure.

BY THE COURT:

s/ illegible
J.